

### **REMARKS**

This responds to the Office Action mailed on August 3, 2006.

No amendments, cancellations, or additions are made to the claims. As a result, claims 1-6 and 34-40 are now pending in this application.

For the convenience of the Examiner, Applicant's remarks concerning the claims will be presented in the same order in which the Examiner presented them in the Office Action.

#### **Request for Revised Form PTO-892**

Applicant notes that in the Office Action mailed March 31, 2006, the Examiner cited a document, Patsiokas (U.S. 6,493,546) in the rejections of claims 1, 4-6, and 37-40. However, this document has not been listed on any Form PTO-892 received by Applicant to date. Applicant respectfully requests that the Examiner prepare and mail a Revised Form PTO-892, listing said document, with the next official communication.

#### **Rejection of Claims 1, 2, 4-6, and 37-40 under 35 U.S.C. §102(b) as Anticipated by Noreen**

Claims 1, 2, and 4-6, and 37-40 were rejected under 35 USC §102(b) as being anticipated by Noreen et al. (U.S. 5,455,823).

The rule under 35 U.S.C. §102 is well settled that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP §2131.

Noreen does not appear to disclose all of the structural elements recited in independent claims 1 and 37.

Regarding claim 1, Noreen does not appear to disclose inter alia a radio frequency (RF) transmitter, coupled to the audio source, to transmit an RF carrier signal modulated with the audio signal [emphasis added]. The passages in Noreen (col. 9, lines 41 through 59; col. 12, line 67; and col. 16, lines 47-67) referred to by the Examiner do not appear to describe an RF carrier

signal modulated with an audio signal. The RF carrier signal in Noreen, as best understood, is modulated by digital data to create a data modulated signal (see col. 9, lines 49-53; col. 16, lines 61-66).

Regarding independent claim 37, as discussed above, Noreen does not appear to disclose inter alia a radio frequency (RF) transmitter, coupled to the audio source, to transmit an RF carrier signal modulated with the audio signal [emphasis added]. The RF carrier signal in Noreen, as best understood, is modulated by a coded data signal to create a data-modulated signal (see Abstract).

Further regarding claims 1 and 37, Noreen does not appear to disclose inter alia a database of optimum carrier frequencies arranged by geolocation. Although one passage (col. 12, lines 44-61) referred to by the Examiner describes “look-up tables”, these do not appear to comprise a database of optimum carrier frequencies arranged by geolocation. Nothing in Noreen’s look-up tables refers to a “geolocation”, which term is not defined within Applicant’s written disclosure, but which one of ordinary skill in the art would understand to comprise geographical position or coordinate values, such as longitude and latitude values. (See, e.g., U.S. Pat. No. 5,844,521 and 6,281,970, which define “geolocation” as comprising longitude and latitude values for an associated user terminal or station.)

For the above reasons, independent claims 1 and 37 should be found to be allowable over Noreen, and Applicant respectfully requests that the rejection of claims 1 and 37 under 35 U.S.C. §102(b) as anticipated by Noreen be withdrawn.

Claims 2 and 4-6, which depend from claim 1 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Claims 38-40, which depend from claim 37 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

**Rejection of Claims 3 and 34-36 under 35 U.S.C. §103(a)**  
**as Unpatentable over Noreen in view of Lehtonen**

Claims 3 and 34-36 were rejected under 35 USC §103(a) as being unpatentable over Noreen et al. in view of Lehtonen (U.S. 2001/0049262).

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the prior art reference (or references when combined) must teach or suggest every limitation of the claim. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA, 1974). MPEP §2143.

The asserted combination of Noreen in view of Lehtonen fails to teach or suggest all of the claim limitations present in independent claims 1 and 34, so a *prima facie* case of obviousness has not been established.

Neither Noreen nor Lehtonen disclose all of the structural elements recited in dependent claim 3 or in independent claim 34. For example, neither Noreen nor Lehtonen disclose inter alia an out-of-band transmitter to transmit a channel selection signal comprising an optimum carrier frequency (as recited in Applicant's claim 3) or an available carrier frequency (as recited in Applicant's claim 34).

For the above reasons, dependent claim 3 and independent claim 34 should be found to be allowable over any combination of Noreen and Lehtonen, and Applicant respectfully requests that the rejection of dependent claim 3 and independent claim 34 under 35 U.S.C. §102(b) as unpatentable over Noreen in view of Lehtonen be withdrawn.

Claims 35-36, which depend from claim 34 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

#### **Additional Elements and Limitations**

Applicant considers additional elements and limitations of the claims to further distinguish over the cited references, and Applicant reserves the right to present arguments to this effect at a later date.

**Conclusion**

Applicant respectfully submits that claims 1-6 and 34-40 are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Ann M. McCrackin (located in Minneapolis, Minnesota) at (612) 349-9592 or Applicant's below-signed attorney (located in Phoenix, Arizona) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

STEVEN B. MCGOWAN

By his Representatives,  
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, Minnesota 55402  
(602) 298-8920

By / Walter W. Nielsen /

Walter W. Nielsen  
Reg. No. 25,539